

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,)
)
Plaintiff,) 2:07-cr-00235-RCJ-PAL
)
)
vs.) **O R D E R**
HECTOR GARCIA,)
)
Defendant.)
)

ORDER

Before the Court for consideration are Defendant's Objections to the Report and Recommendation of United States Magistrate Judge Peggy A. Leen (Def. Obj., Docket no. 26). Magistrate Judge Leen entered her Report and Recommendation on April 4, 2008 (R&R, Docket no. 22), recommending that Defendant's Motion to Suppress (Docket no. 12) be denied.

The Court has conducted a *de novo* review of the record in this case in accordance with 28 U.S.C. § 636(b)(1)(B) and LR IB 3-2, and accepts the Report and Recommendation of Magistrate Judge Leen. IT IS THEREFORE ORDERED that the Report and Recommendation of Magistrate Judge Peggy A. Leen (Docket no. 22) is accepted, and Defendant's Objections (Docket no. 26) are overruled.

BACKGROUND

On September 26, 2007, Defendant Hector Garcia (“Garcia”) was indicted on charges of coercion and enticement in violation of 18 U.S.C. 2422(b). The Indictment alleges that Garcia knowingly attempted to persuade, induce, or entice an individual under the age of eighteen to engage in sexual activity. On September 20, 2007, Garcia, a twenty-nine year old staff sergeant with nine years in the military, was arrested at a park after attempting to meet an individual

1 identifying herself as "Emily." "Emily," Garcia thought, was a thirteen year old girl whom he
2 had met on-line in November 2006, but was in fact the persona of the joint LVMPD/FBI Internet
3 Crimes Against Children Task Force initiated under the direction of Detective Moniot. While
4 "Emily" chatted about living with her grandmother and school, Garcia's conversations with her
5 involved oral sex and intercourse. Garcia also commented on how he could get in trouble for
6 being with a thirteen year old girl.

7 On September 20, 2007, Garcia went to the park to meet "Emily" as had been previously
8 arranged. After parking and heading toward the slides where they were to meet, Garcia was
9 arrested and handcuffed. Moniot was the primary case agent and told Garcia he would like to
10 talk to him privately in his car. Moniot allowed Garcia to be handcuffed in front if he agreed to
11 be non-combative, which he agreed to. In the car Garcia signed a written waiver of his rights and
12 proceeded to engage in a taped conversation about the related events. Moniot testified that he
13 only asked routine booking questions prior to the written waiver and the taped conversation in
14 his car. At the end of the conversation, Garcia asked if he had seriously waived his rights to a
15 lawyer, and Moniot, upon clarifying what Garcia meant, immediately ended the interview and
16 questioning.

17 Garcia testified that Moniot did not ask him any questions about the case until after he
18 signed the advice of rights form. Garcia also testified that he made statements to the effect of
19 "Oh my God, what did I do?" while rocking back and forth in Moniot's vehicle and that these
20 statements were not made in response to any police questioning. Garcia testified that Moniot
21 was nonthreatening and friendly or informal and that he wanted to talk to Moniot. Garcia
22 understood that he could not talk to Moniot until after he signed the advice of rights form and
23 testified several times that he wanted to talk to Moniot. Garcia now seeks to suppress certain
24 incriminating statements he alleges were made in custodial interrogation prior to administration
25 of *Miranda* warnings.

1 Magistrate Judge Leen heard the Motion to Suppress and Objections and entered her
2 Report and Recommendation on April 4, 2008, recommending that Defendant's Motion to
3 Suppress (Docket no. 12) be denied.

4 **DISCUSSION**

5 The Court has conducted a *de novo* review of the record in this case in accordance with
6 28 U.S.C. § 636(b)(1)(B) and LR IB 3-2 and accepts the Report and Recommendation of
7 Magistrate Judge Leen. Judge Leen correctly denied Garcia's Motion to Suppress. Judge Leen
8 clearly outlines the argument in support of her recommendation. (R&R, Docket no. 22 at 9-15).
9 Garcia objects to the report and recommendation essentially because Detective Moniot was
10 friendly and nonthreatening when the incriminating statements were made. (Def. Obj., Docket
11 no. 26 at 6). Judge Leen addressed this issue in her report and recommendation, relying on
12 *Rhode Island v. Innis*. (R&R, Docket no. 22 at 11-12). In that case, although there may have
13 been "subtle compulsion" at work in the police car, a conversation between officers did not
14 amount to interrogation unless the officers had reason to know their comments were likely to
15 elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 303 (1980).

16 Here, Garcia's voluntary statements made in Moniot's presence, but not in response to
17 his questions, are not the result of a custodial interrogation. Garcia was in custody when he
18 made the statements but his incriminating comments were not made as a result of any
19 questioning by Moniot. Garcia testified that the statements were not made in response to any
20 questions by Moniot. (R&R, Docket no. 22 at 8). Although Garcia argues now that Moniot's
21 friendly manner was designed to produce incriminating statements from Garcia, Judge Leen is
22 correct in finding that Garcia was not subjected to custodial interrogation prior to the waiver of
23 his rights. Moniot asked only routine booking questions, which are not the functional equivalent
24 of interrogation. *E.g., Innis*, 446 U.S. at 301; *United States v. Moreno-Flores*, 33 F.3d 1164,
25 1169 (9th Cir. 1994). Garcia wanted to talk to Moniot. Garcia himself testified that Moniot did

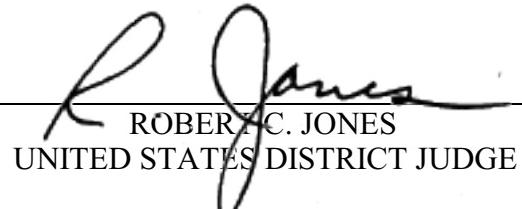
1 not ask him any questions regarding the case until after he had signed the written waiver form
2 in Moniot's car. (R&R, Docket no. 22 at 8). Voluntary statements made during routine booking
3 questioning to a "friendly and nonthreatening" detective, instead of in response to direct case
4 questioning, are not custodial interrogation in violation of Fifth Amendment rights and will not
5 be suppressed. *See, e.g., Bryant v. Vose*, 785 F.2d 364, 368 (1st Cir. Mass. 1986); *United States*
6 *v. Castro*, 723 F.2d 1527, 1532 (11th Cir. Fla. 1984); *United States v. La Monica*, 472 F.2d 580,
7 581 (9th Cir. Ariz. 1972).

8 Judge Leen is also correct in finding that Garcia was advised of and waived his *Miranda*
9 rights, and the Court accepts her recommendation and findings regarding post-*Miranda*
10 statements as well.

11 **CONCLUSION**

12 IT IS THEREFORE ORDERED that the Report and Recommendation of Magistrate
13 Judge Peggy A. Leen (Docket no. 22) denying Garcia's Motion to Suppress (#12) is
14 **AFFIRMED AND ADOPTED**, and Defendant's Objections (Docket no. 26) are overruled.

15 DATED: September 24, 2008.

16
17 
18 ROBERT C. JONES
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25

(nk)